

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
<b>Cedar-Wapsie Communications, Inc.</b>	)	WC Docket No. 08-71
	)	
<b>Petition for Waiver of Section 54.904(d) of the</b>	)	CC Docket No. 96-45
<b>Commission's Rules</b>	)	
	)	
	)	

**PETITION FOR WAIVER OF SECTION 54.904(d)**

Cedar-Wapsie Communications, Inc.<sup>1</sup>, (the "Company"; Study Area Code 359084; Universal Service Administration Company ("USAC") Service Provider Identification Number: 143030181), by its undersigned consultant, and pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, respectfully requests a waiver of the June 30, 2010 deadline to submit the Interstate Common Line Support ("ICLS") annual certification, as set forth in Section 54.904(d) of the Commission's rules. In support of its petition, the Company states as follows:

**1. BACKGROUND AND INTRODUCTION.**

Pursuant to Section 54.904(d) of the Commission rules, in order to receive ICLS a competitive eligible telecommunications carrier ("ETC") must submit to USAC and the Federal Communications Commission ("FCC") an annual certification on or before June 30<sup>th</sup> of the current year in order to be eligible to receive ICLS for the upcoming support year (July – June). The certification states all ICLS will be used only for the provision, maintenance, and upgrading of facilities and service for which the support is intended.

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<sup>1</sup> Subsidiary of Butler-Bremer Mutual Telephone Company (SAC – 351115)

As an incumbent local exchange carrier ("ILEC"), Butler-Bremer Mutual Telephone Company has served the high cost, rural exchanges of Frederika, Iowa; Plainfield, Iowa; Clarksville, Iowa; and Tripoli, Iowa for over 100 years with its principal place of business located at 715 Main, Plainfield, Iowa 50666. In addition to providing voice, data, and video services, Butler-Bremer Mutual Telephone Company formed the Company which began offering wireless service in April 2005 and serves customers within the following FCC license areas: WQDM395, WPUE308, WPOL804, and WPOL803. As of September 30, 2010, the Company served approximately 887 customers.

The Iowa Utilities Board ("IUB") designated competitive ETC status to the Company on December 6, 2005. The Company became eligible to receive high cost support as of that date. Once competitive ETC status was granted and prior to the ICLS certification due June 30, 2010, the Company had made all quarterly 525 filings and annual certification filings in accordance with the Commission's rules. However, only once in 5 years (more than 100 years if you consider the parent company) the Company failed to complete and file one of the many required filings prior to the requested deadline. The ICLS certification was received on July 1, 2010, just one day after the required deadline of June 30, 2010.

Mr. Richard L. McBurney, Butler-Bremer's CEO, was contacted by USAC after it was determined the Company missed the required ICLS certification filing due June 30, 2010. The Company immediately filed its ICLS certification upon notification and through email correspondence between the Company's consultant and USAC, it was determined the Company's ICLS certification was received on July 1, 2010. The Company just recently realized that the filing received by USAC and the FCC just one day late would result in lost ICLS for an

entire six months. Since the Company was notified of its late filing, it has filed all other required filings in a timely manner.

## **2. DISCUSSION.**

The Commission's rules allow for any provision of its rules to be waived if good cause is shown.<sup>2</sup> The Company respectfully submits that good cause exists due to (1) having filed the required certification only one day after the filing deadline, (2) having taken steps to assure future compliance and timely filings and (3) the public interest being served. Each of the points is discussed below.

### **A. USAC Received the Filing One Day After the Deadline.**

The Company inadvertently missed the ICLS certification deadline of June 30, 2010; however, upon being made aware of the delinquent filing, the Company immediately filed the ICLS certification which was then received on July 1, 2010. The Company had every intention of submitting the ICLS certification by the due date and continues to make USAC filings a priority in its business operations as it recognizes the importance of filing USAC certifications in a timely manner.

The Commission has regularly granted similar petitions to waive filing deadlines when the ETC or competitive ETC missed the deadline by only a few days<sup>3</sup>. Since July 2010, the Company has been in full compliance with all filing deadlines established by USAC.

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<sup>2</sup> 47 C.F.R. §1.3

<sup>3</sup> See, e.g., *re Petitions for Waiver of Universal Service High-Cost Filing Deadlines et al.*, Order, WC Docket No. 08-71, CC Docket No. 96-45, 25 FCC Rcd 843, 854-855, para. 22 (2010); *Citizens/Frontier Order*, 20 FCC Rcd at 16764, para. 9 (waiving filing deadline when the filing was submitted two business days after the deadline); *FiberNet, LLC Petition for Waiver of FCC Rule Section 54.307(c)(4)*, CC Docket No. 96-45, Order, 20 FCC Rcd 20316, 20317, para. 6 (Wireline Comp. Bur. 2005) (waiving filing deadline when the filing was submitted five days after the deadline); *Northwest Dakota Cellular of North Dakota Limited Partnership*; *North Central RSA 2 of North Dakota*  
[Continued on next page]

## **B. Material and Substantial Compliance Efforts**

The special circumstances supporting grant of the requested waiver begin with the material, substantial and timely efforts made by the Company to comply with all of the requirements and filings necessary to qualify for and receive ICLS prior to and since the ICLS certification filed on July 1, 2010.

Prior to filing the ICLS certification in question, the Company, including its parent company, had never missed or failed to file timely filings with USAC. These filings included the annual high cost reporting requirements set forth in Section 54.209 of the Commission's rules, the ICLS certification requirements set forth in Section 54.904 of the Commission's rules, and the line count reporting requirements set forth in Section 54.307(c) of the Commission's rules. Up to this point in time, the Company believed it had procedures in place to ensure all filings were made on a timely basis.

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*Limited Partnership; North Dakota RSA No. 3 Limited Partnership; Badlands Cellular of North Dakota Limited Partnership; North Dakota 5-Kidder Limited Partnership; and Bismarck MSA Limited Partnership Petition for Waiver of Section 54.307 of the Commission's Rules, CC Docket No. 96-45, Order, 21 FCC Rcd 9179, 9181, para. 7 (Wireline Comp. Bur. 2006) (waiving filing deadline when the filing was submitted one day after the deadline); Verizon Communications Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules, Order, 21 FCC Rcd 10155, at 10157, para. 9 (Wireline Comp. Bur. 2006) (Verizon Order) (waiving a filing deadline when the filing was submitted two business days after the deadline); AT&T Communications of NY & AT&T Communications of California Petition for Waiver of Section 54.802(a) of the Commission's Rules, CC Docket No. 96-45, Order, 22 FCC Rcd 953, at 954, para. 4 (Wireline Comp. Bur. 2007) (AT&T Order) (waiving filing deadline when the filing was submitted two business days after the deadline); NPCR, Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules, CC Docket No. 96-45, Order, 22 FCC Rcd 560 (Wireline Comp. Bur. 2007) (NPCR Order) (waiving filing deadline when the filing was submitted one business day after the deadline); Benton/Linn Wireless, LLC, Petition for Waiver of Section 54.307(c) of the Commission's Rules; Highland Cellular, Inc., Petition for Waiver of Sections 54.307(c), 54.802(a), and 54.809(c) of the Commission's Rules; Louisa Communications, LLC, Petition for Waiver of Section 54.802(a) of the Commission's Rules; Nebraska Technology & Telecommunications Petition for Waiver of Section 54.802(a) of the Commission's Rules; Northeast Iowa Telephone Company Petition for Waiver of Section 54.307(c) of the Commission's Rules; United States Cellular Corporation Petition for Waiver of Section 54.307(c) of the Commission's Rules; Unity Telephone Company d/b/a UniTel, Inc., Petition for Waiver of Section 54.904(d) of the Commission's Rules; Wapsi Wireless, LLC, Petition for Waiver of Section 54.307(c) of the Commission's Rules, CC Docket No. 96-45, Order, 20 FCC Rcd 19212, 19220, para. 10 (Wireline Comp. Bur. 2005).*

To assure future compliance and timely filings, the Company will require multiple employees, along with the CEO, to set up calendar reminders for USAC filings. By utilizing multiple employees within the Company and an electronic calendar system, the Company will better ensure all future filings are submitted on a timely basis. In addition, the Company is now sending its filings using a process allowing for tracking and receipt verification.

In summary, the Company has and will continue to make substantial, material, timely and good faith efforts to comply with Section 54.904(d) of the Commission's rules.

**C. Granting the Requested Waiver is in the Public Interest**

The Company has made substantial capital expenditures and is fully committed to providing its customers quality wireless services at reasonable rates where wireless service has been lacking in the past. Granting this request of waiver of Commission rules is necessary, in this instance, to prevent the Company, and its customers, from being adversely affected.

The Company is a small business, located in northern Iowa, which provides wireless service in four rural FCC license areas. Receipt of universal service support in this high cost, rural area is essential for the Company to continue to provide its customers quality service comparable to those in urban areas at comparable rates as directed by Section 254(b)(3) of the Telecommunications Act of 1996. The Company estimates the loss of ICLS would be approximately \$29,000 over the 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2010 because an ICLS certification received even one day late automatically causes the Company to lose six months of support. This loss may seem insignificant to larger companies, but this represents almost 5% of the Company's total revenues for 2010. Revenue losses, even of this magnitude, are extremely onerous and disruptive for small, rural companies especially when their major expenses, such as lease agreements, are fixed, not giving them many cost reduction options.

The Company, in alignment with the National Broadband Plan, has plans in the next few years to provide a majority of their rural customers with a 3G network. This plan to upgrade electronics, purchase additional spectrum, etc. is dependent upon uninterrupted ICLS. In the end, granting this request for waiver of the FCC rules would assist in furthering one of the goals of the National Broadband Plan and allow the Company to provide quality service to the very customers the federal universal service program intended to benefit.

The requested waiver will not adversely impact administration of the USF program or other USF recipients because the amount of high cost support received by the Company is a very small part of the total fund for USAC; however, it could cause significant harm to the Company if it is prohibited from receiving the funds for the 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2010. In addition, USAC received the ICLS certification just one day after the June 30, 2010 deadline. This one day delay in USAC's receipt of the Company's ICLS certification should not disrupt or delay USAC's administration of the federal universal service funds, nor will any other party be prejudiced by a grant of this waiver request.

### **3. REQUEST FOR WAIVER.**

The Company understands very well the extreme importance of timely data and certification filings by all ETCs, and regrets its ICLS certification due June 30, 2010 was received by USAC one day late on July 1, 2010. The Company has made modifications to its ICLS certification procedures to ensure future filings are filed on or before the established deadline in accordance with the Commission's rules.

Section 1.3 of the Commission's rules provides the Commission with discretion to waive application of any of its rules upon showing of good cause. In addition, Section 1.925(b)(3) provides for waiver where it is shown that:

(i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that grant of a waiver would be in the public interest or in view of unique or unusual factual circumstances of the instant case, application of the rules would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

(ii) The Company takes no issue with the reasonableness of the Commission's rules requiring timely data submissions by competitive ETCs, and recognizes the importance of compliance with these rules. The Company contends the purpose of these rules, however, is to ensure the Commission and USAC are able to properly project, collect, and distribute all universal service mechanisms in a timely and accurate manner. Given USAC has already received, albeit one day late, the Company's ICLS certification, the lateness should not have unduly hindered USAC's administrative functions. Because the Company took action upon identification of its delinquent filing, the Company contends an interruption of its high cost support for an entire six months would frustrate the purpose of the Commission's Universal Service rules, and not serve the public interest. The Company has been approved for competitive ETC status by the IUB and proper use of the support provided has been certified by the Company with the Commission, USAC, and the IUB. The Company feels it has shown good cause for waiver of this filing deadline under Section 1.3 of the Commission's rules, as well as justification for such a waiver at the Commission's discretion under Section 1.925(b)(3). The waiver

would serve the public interest by allowing the Company to receive ICLS for its competitive ETC offering.

**4. CONCLUSION.**

Good cause having been shown, the Company respectfully requests the Commission promptly grant its petition for a waiver of Section 54.904(d) and direct USAC to accept the Company's ICLS certification and disburse ICLS payments for July 2010 – December 2010.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Ryan A. Boone".

Dated: December 22, 2010

**Cedar-Wapsie Communications, Inc.**  
BY

Ryan A. Boone

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Dated December 22, 2010


Cedar-Wapsie Communications, Inc., WC Docket No. 08-71; CC Docket No. 96-45, December 22, 2010

**DECLARATION**

I, Richard L. McBurney, hereby declare, under penalty of perjury, as follows:

- I. I am the CEO of Cedar-Wapsie Communications, Inc. (the "Company").
- II. I have reviewed the Company's Petition for Waiver of Section 54.904(d) of the Commission's rules and declare that the factual statements and representations therein are true and correct to the best of my knowledge, information and belief.

Signature

A handwritten signature in black ink, appearing to read 'Richard L. McBurney', with a long, sweeping horizontal line extending to the right.

Richard L. McBurney

Cedar-Wapsie Communications, Inc.

CEO